

REMARKS

Claims 22-51 were examined by the Office, and in the Office Action of September 25, 2007 all claims are rejected. With this response claims 22, and 39-51 are amended. All amendments are fully supported by the specification as originally filed. Support for the amendments can be found at least from page 14, line 29—page 15, line 9. Applicant respectfully requests reconsideration and withdrawal of the objections and rejections in view of the following discussion.

This response is submitted along with a Request for Continued Examination (RCE).

Claim Objections

Claims 43-47 are amended to recite “data collector” instead of “data collector means.” Accordingly, applicant respectfully requests withdrawal of the objections to claims 43-47.

Claim Rejections Under § 102

In section 3, on page 3 of the Office Action, claims 22-51 are rejected under 35 U.S.C. § 102(e) as anticipated by Frouin (U.S. Patent No. 6,891,797). Applicant respectfully submits that claim 22 is not disclosed or suggested by Frouin, because Frouin fails to disclose or suggest all of the limitations recited in claim 22. Frouin at least fails to disclose or suggest transferring a data collector from a destination communication device to a source communication device, collecting data to be transferred from the source communication device to the destination communication device using the data collector, and transferring the collected data from the source communication device to the destination communication device using the data collector, as recited in claim 22. Furthermore, in order to further clarify the distinctions between claim 22 and Frouin, claim 22 is amended to recite that the data collector comprises an executable file.

In contrast to claim 22, Frouin relates to a communication system for communication on a network that includes communication devices performing communications in a connected mode or in a non-connected mode. In particular, Frouin applies to asynchronous packet switched networks, making it possible to interconnect a small number of items of multimedia equipment, and provide different service qualities for exchanging data. See Frouin column 1, lines 10-14. Asynchronous packet switching, as discussed in Frouin, may be described in the standard

IEEE-P1355, and is based on switching technology with low implementation cost with regard to the switch. The switch uses only a minimum of resources for effecting the switching of a packet from an input port to an output port. The transfer of packets through the switch takes place as soon as the switch has knowledge of the switching information of said packet without awaiting complete reception of all the packet data. See Frouin column 3, lines 19-29.

In Frouin, in order to establish the communication, the source communication device, which intends to send data on a communication path, transmits to each communication device placed on the path, which communication device may be regarded as destination communication device, an item of information representing the passband necessary for the connection. Upon reception of this item, the communication devices on the path determine the availability of the link leading to the following communication device on the path and, in the event of unavailability, transmit to the source communication device an item of information representing the unavailability of said path. See Frouin column 5, lines 13-25. Therefore, the source communication device sends an item to the destination communication device, upon which the destination communication device determines the availability of the link leading to the following communication device and transmits this information to the source communication device.

However, Frouin does not disclose or suggest transferring a data collector from a destination communication device to a source communication device, as recited in claim 22. Frouin only discloses transmitting items of data in connected mode or in non-connected mode. For example, in connected mode the source communication device transmits an item of information representing an application requirement for transmission. See Frouin column 11, lines 40-45. In non-connected mode, the availability of a path on said network is estimated and when a path is deemed to be available for transmission of data, the data is transmitted on the path in non-connected mode is done. However, transferring a data collector from the destination communication device to the source communication device, as recited in claim 22 is not the equivalent to transferring items of information representing application requirements. For each communication device in the network, Frouin discloses an operation of determining communication parameters based on the application requirements, and the parameters are taken into account in performing table updating operations. See Frouin column 11, lines 46-51. However, the items of information related to application requirements are not the equivalent of the "data collector" recited in claim 22.

Therefore, in contrast to Frouin, transmitting a data collector is transmitting an active program, which actively collects data on the source communication device. A data collector is, according to the invention, not a mere message, which is sent from the destination communication device to the source communication device, where upon reception of this message within the source communication device a certain operation is triggered. In contrast, the data collector itself operates on the source communication device and collects data. In order to further distinguish claim 22 from Frouin, claim 22 is amended to recite that the data collector is an executable file. Therefore, it is clear that an executable file is transferred from the destination communication device to the source communication device, and executed therein to collect data and to transfer data. However, the items of information transferred from the source communication device according to Frouin cannot be such an executable file, since information related to application requirements are not executable files. In addition, the processing means discussed in Frouin are not capable of being transmitted from the destination communication device to the source communication device. Therefore, for at least this reason Frouin fails to disclose or suggest all of the limitations recited in claim 22.

Furthermore, the transmission of a request to establish a connection is not the transmission of a data collector, as recited in claim 22. See Frouin column 13, line 57—column 14, line 19; column 14, lines 49-67. The transmission of the request to establish a connection, as discussed in Frouin, is the sending of a mere message. In addition, when the destination communication device is capable of sending the connection requested by the source communication device, it transmits to the source communication device a connection acceptance. The connection acceptance is, however, a mere message sent from the destination communication device to the source communication device, and not data collected from the source communication device, as recited in claim 22. When the connection acceptance is received on the source communication device, the source communication device sends an item of information representing the establishment of the connection. Therefore, the connection acceptance as such is not a data collector as recited in claim 22. In addition, when the destination communication device may not establish the connection, an item of information representing the impossibility of setting up the connection is sent to the source communication device. This item is not a data collector as recited in claim 22.

Furthermore, as can be seen from Figure 3 and the flowcharts of Figures 4-8 of Frouin, only messages are exchanged between the source communication device and the destination communication device. See also Frouin column 19, lines 45-67. Therefore, contrary to the assertions of the Office Frouin fails to disclose or suggest transferring a data collector from the destination communication device to the source communication device as recited in claim 22. Instead, Frouin only discloses the transfer of message, which are not data collectors as recited in claim 22.

Furthermore, Frouin also fails to disclose or suggest collecting data to be transferred from the source communication device to the destination communication device using the data collector, as recited in claim 22. In claim 22, the data collector itself collects data to be transferred from the source communication device to the destination communication device. Thus, after being sent from the destination communication device to the source communication device the data collector actively collects data on the source communication device to be transmitted to the destination communication device. In addition, Frouin also necessarily fails to disclose or suggest transferring the collected data using the data collector, as recited in claim 22. In contrast, Frouin discloses that the communication devices store a load table, with information relating to the network load. This load table is, however, not the data collected from the source communication device using the data collector, and therefore this load table is not collected data that is transferred using the data collector, as recited in claim 22. For at least the reasons discussed above, Frouin fails to disclose or suggest all of the limitations recited in claim 22, and claim 22 is patentable over Frouin.

Independent claims 39-47 contain limitations similar to those recited in claim 22, and therefore for at least the reasons discussed above in relation to claim 22 are not disclosed or suggested by Frouin.

Claims 23-38 ultimately depend from claim 22, and therefore are not disclosed or suggested by Frouin at least in view of their dependencies.

Independent claims 48-51 contain limitations similar to those recited in claim 22, and therefore for at least the reasons discussed above in relation to claim 22, are not disclosed or suggested by Frouin. Furthermore, claims 48-51 also recite identifying a source communication device with a migration tool of a destination communication device after establishing the data connection between the source communication device and the destination communication

device, and selecting a data collector depending on the identified source communication device.

Frouin at least fails to disclose or suggest that the source communication device is identified with a migration tool of the destination communication device after establishing the data connection between the source communication device and the destination communication device. In the terms of the Frouin reference, the communication devices receiving a request to establish a connection from the source communication device, would have to be able to identify the source communication device sending the message requesting the establishment of a connection and selecting a data collector depending on the identified source communication device. In contrast, the destination communication device according to Frouin only sends a connection acceptance and an operation of confirming the establishment of said connection. These messages do not allow identifying the source communication device and also selecting a data collector depending on the identified source communication device. For this reason in addition to those discussed above in relation to claim 22, new claims 48-51 are new and inventive over the Frouin reference.

Conclusion

For all of the foregoing reasons, it is respectfully submitted that the present application as is in condition for allowance, and such action is earnestly solicited. The undersign hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

Dated: 17 December 2007

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